**AJEI 2017 Summit**

**Oral Argument on a Budget**

**Friday, November 3, 2017 at 11:30 am**

***Participants:***

Moderator and panelist: Lisa Perrochet, Horvitz & Levy LLP**:**

Panelists:

Alan Charles Dell’Ario

Heather B. New, AT&T

Hon. Rosalyn H. Richter, Supreme Court of the State of New York,   
 Appellate Division, First Department

***Learning Objectives*:**

High-stakes appeals often involve significant argument preparation, including detailed review of the law and the record, additional research, moot courts, etc. But lawyers also frequently have to balance their obligation to represent their clients zealously and their role as officers of the court with the reality that their cases do not merit and their clients cannot afford to pay for a no-holds-barred approach. This panel will discuss (1) how lawyers can meaningfully and ethically prepare for oral argument without incurring exorbitant costs and (2) ways in which judges and court procedures can help maintain confidence that our court system is a just and fair place for resolving disputes even when argument is not held or is curtailed in length.

***Topic Outline:***

1. How important is oral argument to courts, parties, counsel, and the public, and when might it appropriately be waived?
2. What should determine how much argument time a particular case warrants and who should argue it?
3. In preparing for argument, how can lawyers balance their ethical obligations with cost and other practical constraints, and how should clients be involved in these decisions?
4. What are some efficient and effective means of argument preparation?
5. How can lawyers obtain the most benefit from argument and best manage client expectations?
6. Can the courts play a role in helping parties feel that they have had their day in court without breaking their bank accounts, and if so how?

***Detailed Outline:***

1. Importance of oral argument to courts, parties, counsel, public

* 1. Perception vs. reality – should both be considered?
  2. How can parties be made to feel they have had a full and fair hearing and their counsel have represented them well if their appeals are given short shrift at argument or no argument at all?
  3. Is there a value to having counsel present argument in appeals where this is unlikely to affect the decision?
  4. Should significance be given to transparency of the judicial process?
  5. How can lawyers and judges better manage parties’ and the public’s understanding of and expectations about oral argument?

2. Deciding whether to request or grant oral argument

a. Which appeals should be argued, and what are the criteria?

b. Who should decide, the courts or the parties?

c. Are there cases where argument might appropriately be waived, and how should this determination be made?

d. Are there ethical constraints on counsel’s recommending against or waiving oral argument?

e. What role should clients play in making these decisions, should management be involved, and what professional responsibility obligations apply?

3. Deciding the amount of argument time for a particular appeal

a. What factors should determine argument time for an appeal, and do they vary depending on the type of case?

b. How much weight should be given to the parties’ views?

c. What should be the respective roles of the parties and counsel in deciding how much argument time to request?

d. What ethical considerations might come into play in counsel’s recommending or requesting a particular amount of time?

e. How can clients be involved if decisions are made on the day of or during argument?

4. Deciding who should argue an appeal

a. How should counsel weigh advocacy, efficiency, and ethical considerations in recommending which lawyer on the team should argue an appeal?

b. Who should make the ultimate decision on this question?

c. How can younger lawyers best get the argument experience they need to become viable options to argue major cases?

5. Preparing for oral argument effectively and efficiently

a. Updating research

b. Reviewing the briefs, issues, and relevant cases

c. Becoming familiar with the record

d. Predicting issues likely to come up

e. Consulting with others

* + 1. Discussion sessions
    2. Moot courts
  1. How might technology improve efficiency in any of the above?
  2. Should preparation time be related to the amount of argument time granted by the court, and how should lawyers proceed if this isn’t known in advance?
  3. How can counsel strike the balance between their ethical obligations to represent their clients zealously and their role as officers of the court with cost and other practical constraints?
  4. To what extent should clients be involved in making these decisions?
  5. Are there ways in which courts can assist in streamlining argument preparation, as, for example, identifying key issues in advance?

6. Presenting oral argument

a. Travel time: how can it be used efficiently?

b. Spending the day: are there ways to balance counsel’s need to be present and desire to get to know the panel with cost concerns?

c. Can video or other technology make presentation of argument more efficient, and are there associated costs?

d. When might counsel consider not arguing or pressing a particular issue presented by an appeal or agreeing with the court that it is not a winning point, and does this raise any ethical concerns?

e. How can counsel best deal with questions at argument that they cannot answer fully because of constraints imposed on their preparation?

f. When might counsel offer or agree to submit additional materials on an issue that comes up at argument, and should cost be a consideration?

g. How important is rebuttal time, and how should argument be divided between the main argument and rebuttal?

h. Does the client’s presence in the courtroom impact any of these points?

i. In there a role courts can play in balancing the desire for useful and meaningful oral argument with increasing economic constraints on counsel?